

AMENDED IN ASSEMBLY JUNE 26, 2003

AMENDED IN SENATE MARCH 25, 2003

SENATE BILL

No. 392

**Introduced by Committee on Local Government (Senators
Torlakson (Chair), Ackerman, Hollingsworth, Machado,
Margett, Perata, and Soto)**

February 20, 2003

An act to amend Sections 5060, 5070, 5101.6, 5108, 5132, 5302.5, 5303, 5361, 10301, 10311.1, 10353, and 10366 of, to add Sections 5132.1, 5132.2, 5132.3, and 5132.4 to, and to repeal Sections 5108.1, 5108.2, 5220, 5221, 5222, 10310, 10310.2, and 10311 of, the Streets and Highways Code, relating to local agency assessments.

LEGISLATIVE COUNSEL'S DIGEST

SB 392, as amended, Committee on Local Government. Local agency assessments.

Existing statutory law provides notice, protest, and hearing procedures for the levying of new or increased assessments by local government agencies pursuant to Articles XIII C and XIII D of the California Constitution. These statutory procedures supersede other statutory provisions applicable to the levying of these assessments.

This bill would conform certain provisions of *the Improvement Act of 1911* and the Municipal Improvement Act of 1913 to the statutory procedures for levying assessments pursuant to Articles XIII C and XIII D of the California Constitution.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. *Section 5060 of the Streets and Highways Code is amended to read:*

5060. ~~No other law of this State shall govern or be applicable to any publication provided for in this division, nor shall the~~ *The provisions of Title 1, Division 7, Chapter 1 (commencing with Section 6000) of Division 7 of Title 1 of the Government Code shall not have any application to any publication provided for in this division.*

SEC. 2. *Section 5070 of the Streets and Highways Code is amended to read:*

5070. Whenever in this division notice is required to be given by mail ~~and the time or method for mailing is not specified, the notice shall be given by mail as follows:~~

(a) ~~The legislative body shall direct the clerk to mail the notice, postage prepaid, to all persons owning real property which is proposed to be assessed to pay any part of the cost of the work, whose names and addresses appear on the last equalized assessment roll or as known to the clerk. If property assessed by the State under Section 14 of Article XIII of the Constitution is proposed to be assessed, such notice shall be mailed to every owner of such property at the address thereof shown on the last board roll transmitted to the county auditor.~~

(b) ~~If the notice is a notice of a hearing, it shall be mailed at least 15 days prior to the date fixed for that hearing, notice shall be given in accordance with the provisions of Section 53753 of the Government Code.~~

SEC. 3. *Section 5101.6 of the Streets and Highways Code is amended to read:*

5101.6. Following the levy of an assessment pursuant to this division to pay, in whole or in part, the costs and expenses of works, system or facilities authorized by subdivision (a) of Section 5101.5 upon a district benefited thereby, and annually on or before June 30th, the legislative body may prepare and approve an estimate of the expenditures required during the ensuing fiscal year for the maintenance, operation, repair and improvement of such works, system or facilities and shall deduct from such estimate the amount of revenues, if any, which the legislative body estimates will accrue during such year from the operation of such

works, system or facilities and will be available to pay costs of such maintenance, operation, repair and improvement.

~~The legislative body may levy and collect in any year upon and against all of the taxable land and improvements within such district a special ad valorem assessment sufficient to raise a sum of money not exceeding the net amount thus determined but the rate of assessment in any one year shall not exceed twenty-five cents (\$0.25) on each one hundred dollars (\$100) assessed value as shown on the assessment roll used by the city for city taxation.~~

~~The special ad valorem assessment shall be levied, collected and enforced at the same times, in the same manner, by the same officers, and with the same interest and penalties, as in the case of general taxes levied by the city increase the assessment in accordance with the provisions of Section 53753 of the Government Code.~~ The proceeds of the assessment shall be placed in a separate fund of the city and shall be expended only for the maintenance, operation, repair or improvement of such works, system or facilities.

SEC. 4. Section 5108 of the Streets and Highways Code is amended to read:

5108. Approval of the owners of land for any improvements specified in Section 5101.4 ~~may, at the discretion of the legislative body, shall be secured through an election in accordance with the provisions of Section 53753 of the Government Code.~~

SEC. 5. Section 5108.1 of the Streets and Highways Code is repealed.

~~5108.1.—(a) Notwithstanding any other provision of law, the election may be conducted by mailed ballot pursuant to Chapter 1 (commencing with Section 4000) of Division 4 of the Elections Code, regardless of the number of voters eligible to vote. Prior to the election, the legislative body shall provide for published notice of the election at least once a week for two weeks. Only one vote may be cast for each parcel of land within the territory proposed to be studied.~~

~~(b) If the landowner is a partnership, joint tenancy, corporation, or tenancy in common, the vote to which the landowner is entitled may be cast by any of the partners, joint tenants, or tenants in common. However, only one vote may be cast on behalf of the landowner.~~

~~(c) As used in this section:~~

1 ~~(1) “Landowner” means any person shown on the last~~
2 ~~equalized assessment roll as the owner of land. However, if the~~
3 ~~ownership of the land is changed after the making of the last~~
4 ~~equalized assessment roll, the new owner thereof may vote upon~~
5 ~~the production of evidence of ownership of the land.~~

6 ~~(2) “Parcel” means any parcel as identified on the last~~
7 ~~equalized assessment roll.~~

8 *SEC. 6. Section 5108.2 of the Streets and Highways Code is*
9 *repealed.*

10 ~~5108.2. The measure to be voted on shall include a description~~
11 ~~of the improvements proposed, a map showing the territory to be~~
12 ~~benefited by the proposed improvements and proposed to be~~
13 ~~subject to assessments, and an estimate of the costs of the~~
14 ~~improvements proposed. The measure to be voted on shall be~~
15 ~~approved by the legislative body after holding a public hearing.~~

16 *SEC. 7. Section 5132 of the Streets and Highways Code is*
17 *amended to read:*

18 5132. The resolution of intention shall be sufficient if it states
19 in general terms the class or kinds of work contemplated, such as
20 grading, paving, sewerage and other work, and gives in general the
21 location of the proposed work and refers to plans, profiles, detailed
22 drawings and specifications or such of them as may be suitable or
23 proper for the full and detailed description of the proposed work,
24 and if it refers to any agreement entered into pursuant to Section
25 5103. The resolution of intention shall contain also a notice of the
26 day, hour, and place ~~when and of the public hearing~~ where any and
27 all persons having any objections to the proposed work or work
28 and acquisition may appear before the legislative body and show
29 cause why the proposed work or work and acquisition should not
30 be carried out in accordance with the resolution of intention.

31 The notice shall also contain the name and telephone number of
32 a local department or agency designated by the legislative body to
33 answer inquiries regarding the hearing proceedings. ~~Such That~~
34 notice shall be omitted if the hearing of objections is not required
35 as provided hereunder. The hearing of objections shall not be less
36 than ~~15 nor more than 60~~ 45 days from the date of the passage of
37 the resolution.

38 ~~The hearing of objections shall not be required if the legislative~~
39 ~~body, when considering passage of the resolution of intention,~~
40 ~~finds and determines by a four-fifth's vote of all members thereof,~~

1 ~~that all of the owners of lots or lands liable to be assessed, or their~~
2 ~~agents, who shall make oath that they are such agents, have signed~~
3 ~~and filed a petition waiving the hearing, with the clerk, on or before~~
4 ~~the fifth day prior to the day that the resolution of intention is to~~
5 ~~be considered for passage, declaring that they do not have any~~
6 ~~objections to the proposed work or work and acquisition, the~~
7 ~~extent of the district to be assessed, or any agreement entered into~~
8 ~~pursuant to Section 5103 or any other objections, and requesting~~
9 ~~that the hearing of objections shall not be required.~~

10 The intention of the legislative body to enter into an agreement
11 with any other public agency, or public utility, pursuant to the
12 provisions of Chapter 5 (commencing with Section 5170) or
13 Chapter 28 (commencing with Section 5896.1) of this part, shall
14 be briefly stated in the resolution of intention.

15 SEC. 8. Section 5132.1 is added to the Streets and Highways
16 Code, to read:

17 5132.1. In addition to the notice included in the resolution of
18 intention, the legislative body shall give notice by mail to the
19 record owner of each identified parcel prior to levying a new or
20 increased assessment, or an existing assessment that is subject to
21 the procedures and approval process set forth in Section 4 of
22 Article XIII D of the California Constitution. Each such notice
23 shall comply with the provisions of subdivision (b) of Section
24 53753 of the Government Code.

25 SEC. 9. Section 5132.2 is added to the Streets and Highways
26 Code, to read:

27 5132.2. Each notice sent pursuant to Section 5132.1 shall
28 contain an assessment ballot that includes that legislative body's
29 address for receipt of the form and a place where the person
30 returning the assessment ballot may indicate his or her name, a
31 reasonable identification of the parcel, and his or her support or
32 opposition to the proposed assessment. The form of the assessment
33 ballot shall comply with the provisions of subdivision (c) of Section
34 53753 of the Government Code.

35 SEC. 10. Section 5132.3 is added to the Streets and Highways
36 Code, to read:

37 5132.3. At the time, date, and place stated in the notice mailed
38 pursuant to Section 5132.1, the legislative body shall conduct a
39 public hearing upon the proposed assessment in accordance with
40 the provisions of subdivision (d) of Section 53753 of the

1 *Government Code. At the conclusion of the public hearing, the*
2 *legislative body shall tabulate the assessment ballots submitted*
3 *and not withdrawn, in accordance with the provisions of*
4 *subdivision (e) of Section 53753 of the Government Code. If there*
5 *is a majority protest against the imposition of a new assessment,*
6 *or the extension of an existing assessment, or an increase in an*
7 *existing assessment, the legislative body shall not impose, extend,*
8 *or increase the assessment.*

9 *SEC. 11. Section 5132.4 is added to the Streets and Highways*
10 *Code, to read:*

11 *5132.4. If the legislative body has complied with the notice,*
12 *protest, and hearing provisions set forth in this article, or if the*
13 *legislative body is not required to comply with those requirements*
14 *because the assessment is exempt from the procedures and*
15 *approval process set forth in Section 4 of Article XIII D of the*
16 *California Constitution, then those requirements shall not apply in*
17 *subsequent fiscal years unless the assessment methodology is*
18 *changed to increase the assessment, or the amount of that*
19 *assessment is proposed to exceed an assessment formula or range*
20 *of assessments adopted by an agency in accordance with Article*
21 *XIII D of the California Constitution or Section 53753 of the*
22 *Government Code.*

23 *SEC. 12. Section 5220 of the Streets and Highways Code is*
24 *repealed.*

25 ~~5220.—At any time not later than the hour set for hearing~~
26 ~~objections to the proposed work, any owner of property liable to~~
27 ~~be assessed for the work may make written protest against the~~
28 ~~proposed work or against the extent of the district to be assessed,~~
29 ~~or against any agreement entered into pursuant to Section 5103, or~~
30 ~~any of them. Such protest must be in writing, must contain a~~
31 ~~description of the property in which each signer thereof is~~
32 ~~interested, sufficient to identify the same and, if the signers are not~~
33 ~~shown on the last equalized assessment roll as the owners of such~~
34 ~~property, must contain or be accompanied by written evidence that~~
35 ~~such signers are the owners of such property. All such protests~~
36 ~~shall be delivered to the clerk, and no other protests or objections~~
37 ~~shall be considered.~~

38 *SEC. 13. Section 5221 of the Streets and Highways Code is*
39 *repealed.*

~~5221. At the time set for hearing protests the legislative body shall proceed to hear and pass upon all protests so made as required by Section 5220 and its decision shall be final and conclusive. The legislative body may adjourn the hearings from time to time. Any such protest may be withdrawn by the owner making the same, in writing, at any time prior to the conclusion of said protest hearing or any such adjournment thereof.~~

SEC. 14. Section 5222 of the Streets and Highways Code is repealed.

~~5222. If the protest is against the proposed work and the legislative body finds that the protest is made by the owners of more than one-half of the area of the property to be assessed for the improvements, and protests are not withdrawn so as to reduce the same to less than a majority, no further proceedings shall be taken for a period of one year from the date of the decision of the legislative body on the hearing, unless the protests are overruled by an affirmative vote of four-fifths of the members of the legislative body finding that the public health and safety require that the improvements be made. The determination of the legislative body shall be final and conclusive.~~

SEC. 15. Section 5302.5 of the Streets and Highways Code is amended to read:

5302.5. If the legislative body, in the resolution of intention, declares that any lot or parcel of land owned and used as provided in Section 5301 shall be included in the assessment, or if no declaration is made respecting any such lot or parcel of land then any assessment upon such lot or parcel of land, ~~except any lot or parcel owned by the United States or any department thereof or by the State of California or any department thereof,~~ shall be an enforceable obligation against the owner of such property and shall be paid, within 30 days after the date of recording the assessment, by the officer, officers, or board having charge of the disbursement of the funds of the owner of such lot or parcel of land and, if not paid within said 30 days, shall bear interest until paid at the rate stated in the resolution of intention for the bonds proposed to be issued, and if no bonds are proposed to be issued then at the rate of not more than 7 percent per annum until paid; provided, however, that if said assessment is not paid within said 30-day period the city may, and if the city has so provided in its resolution of intention shall, at the expiration thereof, forthwith

1 advance the necessary sum and pay the assessment and shall
2 collect the amount of said assessment and interest thereon from the
3 said obligated owner and may enforce the collection thereof by
4 writ of mandate or other proper remedy. If for any reason there are
5 not moneys available for the payment of said assessment, then the
6 legislative body of the public entity which owns said property so
7 assessed may elect to cause said assessment to be payable in a
8 number of installments not to exceed the number of installments
9 of and at the same interest rate as bonds issued in the proceedings
10 creating the assessment, or if no bonds are to be issued, for a
11 number of installments not to exceed the number of installments
12 of annual payments as provided by Section 6462 of this code for
13 payment of bonds issued under the provisions of this division and
14 for a rate of interest to be specified. In the event the legislative
15 body of the entity whose property is assessed decides that said
16 assessment shall be payable in installments, then the officer,
17 officers or board whose duty it is to levy taxes for said obligated
18 owner, including school districts but not limited thereto, shall
19 include in the next tax levy an amount, in addition to moneys for
20 all other purposes, sufficient to pay the annual installment of
21 principal and interest upon said assessment with interest on the
22 unpaid principal of the assessment to date of the payments, and
23 shall include in each succeeding tax levy a like amount or more,
24 in addition to moneys for all other purposes, until the principal of
25 said assessment and all interest on unpaid portions thereof, shall
26 be paid in full. ~~Said tax levy shall be made notwithstanding that~~
27 ~~said tax levy, exceeds the maximum tax rate which may otherwise~~
28 ~~be imposed by law.~~ In the event the officer, officers, or board
29 whose duty it is to levy taxes fails to ~~provide for a tax levy to pay~~
30 ~~and~~ discharge the principal of the assessment and the interest
31 thereon, the owner of the assessment may compel the levy thereof
32 in the manner hereinabove set forth by writ of mandate. No statute
33 of limitations shall bar any right provided for herein to enforce the
34 collection of an assessment of the type described herein and any
35 interest due thereon until four years after the due date of the last
36 principal payment due upon said assessment. The owner of an
37 assessment described herein may use mandamus or other
38 appropriate remedy to compel the officer, officers or board whose
39 duty it is to levy taxes for said obligated owner to levy an amount
40 in a given year equal to the amount necessary to pay the installment

1 of principal and interest on the assessment in said year, and may
2 continue to use mandamus or other remedy to cause like
3 installments of the amount of principal and interest accruing to be
4 levied each year until the whole of the assessment due has been
5 paid.

6 If the owner of an assessment is successful in any action to
7 compel the levy of a tax under this section he shall be awarded
8 reasonable attorneys' fees as fixed by the court and costs and said
9 attorneys' fees and costs shall be included in said tax levy.

10 *SEC. 16. Section 5303 of the Streets and Highways Code is*
11 *amended to read:*

12 5303. If the legislative body, in the resolution of intention,
13 declares that any lot or parcel of land used as provided in Section
14 5301 and owned by the United States or any department thereof or
15 the State of California or any department thereof shall be included
16 in the assessment, ~~or if no declaration is made respecting any such~~
17 ~~lot or parcel of land,~~ then the city shall be liable for such sum as
18 may thereafter be assessed against such lot or parcel of land and
19 which is unpaid after 30 days from the recordation of the
20 assessment. Such sum shall be payable by the city out of the
21 general fund unless the legislative body shall in its resolution of
22 intention designate another fund. The foregoing provisions of this
23 section shall not apply to any assessment pursuant to Chapter 14
24 (commencing with Section 5320) of Part 3 of this division against
25 any such land owned by the State of California or department
26 thereof, but the city shall advance the amount of any such
27 assessment in such assessment proceedings and shall in such case
28 become the owner of such assessment and entitled to repayment
29 of such amount with interest thereon at the rate provided in that
30 chapter from the State of California or any department thereof.

31 *SEC. 17. Section 5361 of the Streets and Highways Code is*
32 *amended to read:*

33 5361. The assessment shall briefly refer to the contract, the
34 work contracted for and performed, and shall show the amount to
35 be paid therefor, together with all incidental expenses, the amount
36 of each assessment against each lot or portion of a lot, the number
37 of each lot or portion or portions of a lot so assessed, *the additional*
38 *information required by subdivision (b) of Section 53753 of the*
39 *Government Code*, and shall have attached thereto a diagram
40 exhibiting each street or street crossing, place, property or rights

1 of way on which any work has been done, showing the relative
2 location of each lot or portion of lot to the work done, numbered
3 to correspond with the numbers of the assessments.

4 *SEC. 18.* Section 10301 of the Streets and Highways Code is
5 amended to read:

6 10301. After passing on the report, the legislative body shall
7 by resolution appoint the time and place for hearing protests to the
8 proposed assessment and shall cause notice of that hearing and a
9 public meeting required by Section 54954.6 of the Government
10 Code to be mailed as provided in subdivision (c) of that section.
11 If new, increased, or extended assessments are proposed, the
12 legislative body shall comply with the notice, protest, and hearing
13 procedures in Section 53753 of the Government Code.

14 ~~SEC. 2.~~

15 *SEC. 19.* Section 10310 of the Streets and Highways Code is
16 repealed.

17 ~~SEC. 3.~~

18 *SEC. 20.* Section 10310.2 of the Streets and Highways Code
19 is repealed.

20 ~~SEC. 4.~~

21 *SEC. 21.* Section 10311 of the Streets and Highways Code is
22 repealed.

23 ~~SEC. 5.~~

24 *SEC. 22.* Section 10311.1 of the Streets and Highways Code
25 is amended to read:

26 10311.1. If it shall be necessary, in order to find whether a
27 majority protest exists, to determine whether any or all of the
28 signers of written protests are the “owners” of property to be
29 assessed, the legislative body shall make such determination from
30 the last equalized assessment roll. The legislative body shall be
31 under no duty to obtain or consider any other evidence as to
32 ownership of property and its determination of ownership shall be
33 final and conclusive.

34 ~~SEC. 6.~~

35 *SEC. 23.* Section 10353 of the Streets and Highways Code is
36 amended to read:

37 10353. Before ordering any changes made, other than as
38 provided in Section 10352, the legislative body shall adopt a
39 resolution briefly describing the changes proposed to be made,
40 stating the amount of the estimated increase or decrease in the cost

1 of the improvement by reason of the proposed changes and giving
2 notice of a time and place when and where any interested person
3 having any objection to the changes proposed to be made may
4 appear before the legislative body and show cause why the changes
5 should not be ordered. The resolution shall also contain the name
6 and telephone number of a local department or agency designated
7 by the legislative body to answer inquiries regarding the hearing
8 proceedings. The resolution may describe the changes by referring
9 to maps, plats, plans, profiles, detailed drawings, or specifications
10 on file in the office of the clerk of the legislative body or engineer,
11 which shall indicate the changes proposed to be made and which
12 shall govern for all details thereof. The resolution shall be
13 published pursuant to Section 6061 of the Government Code, at
14 least 10 days prior to the date of the hearing. If new, increased, or
15 extended assessments are proposed, the legislative body shall
16 comply with the notice, protest, and hearing procedures in Section
17 53753 of the Government Code.

18 ~~SEC. 7.~~

19 *SEC. 24.* Section 10366 of the Streets and Highways Code is
20 amended to read:

21 10366. (a) For purposes of proceeding under this chapter, the
22 notice shall contain the following elements:

23 (1) A statement of the time, place, and purpose of the hearing
24 on the resolution of intention and report.

25 (2) A statement of the total estimated cost of the proposed
26 improvement and of the maximum cost of the improvement.

27 (3) The estimated and maximum amounts, as shown by the
28 report, to be assessed against the particular parcel covered by the
29 notice.

30 (4) A statement that any person interested may file a protest in
31 writing as provided in this division.

32 (b) If new, increased, or extended assessments are proposed,
33 the legislative body shall comply with the notice, protest, and
34 hearing procedures in Section 53753 of the Government Code.